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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 136**

**Introduced by Assembly Member Beall**

**(Coauthors: Assembly Members Ammiano, Bradford, Buchanan, Carter, Fletcher, Fong, Fuentes, Furutani, Garrick, Roger Hernández, Huffman, Ma, Nestande, Swanson, and Valadao)**

January 12, 2011

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An act to amend Section 2881 of the Public Utilities Code, relating to telecommunications.

### LEGISLATIVE COUNSEL'S DIGEST

AB 136, as amended, Beall. Telecommunications: universal service: speech disabilities.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to oversee administration of the state's universal service programs, including the deaf and disabled programs. The existing deaf and disabled universal service program, among other things, requires the commission to design and implement a program to provide a telecommunications device capable of serving the needs of

individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to any subscriber who is certified as an individual who is deaf or hearing impaired.

This bill would require the commission to expand the program to include assistance to individuals with speech disabilities, including assistance to purchase speech-generating devices, accessories, and mounting systems, and specialized telecommunications equipment. *The bill would require the commission to design and implement a program to provide access to a speech-generating device to any subscriber who is certified as having a speech disability at no charge additional to the basic exchange rate. The bill would require the commission to adopt regulations to implement the program.* The bill would require the commission to evaluate options for controlling the program costs of providing speech-generating devices, *and include information on any barriers to participation in the program by eligible subscribers,* as part of an existing report to the Legislature.

*Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime. Because the bill would require the commission to adopt regulations, the violation of which would be a crime, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. The Legislature finds and declares all of the
- 2     following:
- 3     (a) Certain speech-generating devices are classified by the
- 4     United States Department of Health and Human Services guidelines
- 5     as durable medical equipment.

(b) *The provision of durable medical equipment traditionally has been a function of public and private health insurance programs.*

(c) *It is the intent of the Legislature that public and private health insurance programs continue to be the provider of first resort for speech-generating devices that are classified as durable medical equipment and that the Public Utilities Commission only provide access to those devices when funding from traditional public and private health insurance policies and programs is unavailable.*

**SECTION 1.**

**SEC. 2.** Section 2881 of the Public Utilities Code is amended to read:

2881. (a) The commission shall design and implement a program to provide a telecommunications device capable of serving the needs of individuals who are deaf or hearing impaired, together with a single party line, at no charge additional to the basic exchange rate, to a subscriber who is certified as an individual who is deaf or hearing impaired by a licensed physician and surgeon, audiologist, or a qualified state or federal agency, as determined by the commission, and to a subscriber that is an organization representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision-(e) (h). A licensed hearing aid dispenser may certify the need of an individual to participate in the program if that individual has been previously fitted with an amplified device by the dispenser and the dispenser has the individual's hearing records on file prior to certification. In addition, a physician assistant may certify the needs of an individual who has been diagnosed by a physician and surgeon as being deaf or hearing impaired to participate in the program after reviewing the medical records or copies of the medical records containing that diagnosis.

(b) The commission shall also design and implement a program to provide a dual-party relay system, using third-party intervention to connect individuals who are deaf or hearing impaired and offices of organizations representing individuals who are deaf or hearing impaired, as determined and specified by the commission pursuant to subdivision-(e) (h), with persons of normal hearing by way of intercommunications devices for individuals who are deaf or hearing impaired and the telephone system, making available

1 reasonable access of all phases of public telephone service to  
2 telephone subscribers who are deaf or hearing impaired. In order  
3 to make a dual-party relay system that will meet the requirements  
4 of individuals who are deaf or hearing impaired available at a  
5 reasonable cost, the commission shall initiate an investigation,  
6 conduct public hearings to determine the most cost-effective  
7 method of providing dual-party relay service to the deaf or hearing  
8 impaired when using a telecommunications device, and solicit the  
9 advice, counsel, and physical assistance of statewide nonprofit  
10 consumer organizations of the deaf, during the development and  
11 implementation of the system. The commission shall apply for  
12 certification of this program under rules adopted by the Federal  
13 Communications Commission pursuant to Section 401 of the  
14 federal Americans with Disabilities Act of 1990 (Public Law  
15 101-336).

16 (c) The commission shall also design and implement a program  
17 whereby specialized or supplemental telephone communications  
18 equipment may be provided to subscribers who are certified to be  
19 disabled at no charge additional to the basic exchange rate. The  
20 certification, including a statement of visual or medical need for  
21 specialized telecommunications equipment, shall be provided by  
22 a licensed optometrist, physician and surgeon, or physician  
23 assistant, acting within the scope of practice of his or her license,  
24 or by a qualified state or federal agency as determined by the  
25 commission. The commission shall, in this connection, study the  
26 feasibility of, and implement, if determined to be feasible, personal  
27 income criteria, in addition to the certification of disability, for  
28 determining a subscriber's eligibility under this subdivision.

29 (d) (1) *The commission shall also design and implement a*  
30 *program to provide access to a speech-generating device to any*  
31 *subscriber who is certified as having a speech disability at no*  
32 *charge additional to the basic exchange rate. The certification*  
33 *shall be provided by a licensed physician, licensed*  
34 *speech-language pathologist, or qualified state or federal agency.*  
35 *The commission shall provide to a certified subscriber access to*  
36 *a speech-generating device that is all of the following:*

37 (A) *A telecommunications device or a device that includes a*  
38 *telecommunications component.*

1     (B) *Appropriate to meet the subscriber's needs for access to,*  
2     *and use of, the telephone network, based on the recommendation*  
3     *of a licensed speech-language pathologist.*

4     (C) *Consistent with the quality of speech-generating devices*  
5     *available for purchase in the state.*

6     (2) *The commission shall adopt regulations to implement this*  
7     *subdivision and subdivision (e).*

8     (e) *All of the following apply to any device or equipment*  
9     *described in this section that is classified as durable medical*  
10    *equipment under guidelines established by the United States*  
11    *Department of Health and Human Services:*

12    (1) *It is the intent of the Legislature that the commission be the*  
13    *provider of last resort and that eligible subscribers first obtain*  
14    *coverage from any available public or private insurance.*

15    (2) *The commission may require the subscriber to provide*  
16    *information about coverage for any or all of the cost of the device*  
17    *or equipment that is available from any public or private insurance,*  
18    *the cost to the subscriber of any deductible, copayment, or other*  
19    *relevant expense, and any related benefit cap information.*

20    (3) *The total cost of any device or equipment provided to a*  
21    *subscriber under this section shall not exceed the rate of*  
22    *reimbursement provided by Medi-Cal for that device or equipment.*

23    (f) *Nothing in this section requires the commission to provide*  
24    *training to a subscriber on the use of a speech-generating device.*

25    ~~(f)~~

26    (g) *The commission shall establish a rate recovery mechanism*  
27    *through a surcharge not to exceed one-half of 1 percent uniformly*  
28    *applied to a subscriber's intrastate telephone service, other than*  
29    *one-way radio paging service and universal telephone service,*  
30    *both within a service area and between service areas, to allow*  
31    *providers of the equipment and service specified in subdivisions*  
32    *(a), (b), (c), and ~~(f)~~ (i), to recover costs as they are incurred under*  
33    *this section. The surcharge shall be in effect until January 1, 2014.*  
34    *The commission shall require that the programs implemented under*  
35    *this section be identified on subscribers' bills, and shall establish*  
36    *a fund and require separate accounting for each of the programs*  
37    *implemented under this section.*

38    ~~(e)~~

39    (h) *The commission shall determine and specify those statewide*  
40    *organizations representing the deaf or hearing impaired that shall*

1 receive a telecommunications device pursuant to subdivision (a)  
2 or a dual-party relay system pursuant to subdivision (b), or both,  
3 and in which offices the equipment shall be installed in the case  
4 of an organization having more than one office.

5 ~~(f)~~

6 (i) (1) The commission shall expand the program created by  
7 this section to include assistance to individuals with speech  
8 disabilities that impair the individual's access to, and use of, the  
9 telephone network. The commission shall ensure that  
10 speech-generating devices, accessories, and mounting systems,  
11 and specialized telecommunications equipment, including infrared  
12 telephones, speaker phones, and telephone interface devices, are  
13 funded through the program.

14 (2) The commission shall ensure that only individuals who are  
15 both residents of the state and speech impaired as certified by a  
16 licensed physician, licensed speech-language pathologist, or  
17 qualified state or federal agency are eligible.

18 (3) The commission shall provide to each eligible applicant the  
19 appropriate equipment consistent with the recommendation of a  
20 licensed speech-language pathologist.

21 (4) The commission shall ensure that the equipment provided  
22 pursuant to this subdivision is consistent with the economy,  
23 efficiency, and quality of equipment that is available for purchase  
24 in the state.

25 ~~(g)~~

26 (j) The commission may direct a telephone corporation subject  
27 to its jurisdiction to comply with its determinations and  
28 specifications pursuant to this section.

29 ~~(h)~~

30 (k) The commission shall annually review the surcharge level  
31 and the balances in the funds established pursuant to subdivision  
32 ~~(d)~~ (g). Until January 1, 2014, the commission may make, within  
33 the limits set by subdivision-~~(d)~~ (g), any necessary adjustments to  
34 the surcharge to ensure that the programs supported thereby are  
35 adequately funded and that the fund balances are not excessive. A  
36 fund balance that is projected to exceed six months' worth of  
37 projected expenses at the end of the fiscal year is excessive.

38 ~~(i)~~

39 (l) The commission shall prepare and submit to the Legislature,  
40 on or before December 31 of each year, a report on the fiscal status

of the programs established and funded pursuant to this section and Sections 2881.1 and 2881.2. The report shall include a statement of the surcharge level established pursuant to subdivision ~~(d)~~ (g) and revenues produced by the surcharge, an accounting of program expenses, and an evaluation of options for controlling those expenses and increasing program efficiency, including, but not limited to, all of the following proposals:

(1) The establishment of a means test for persons to qualify for program equipment or free or reduced charges for the use of telecommunication services.

(2) If and to the extent not prohibited under Section 401 of the federal Americans with Disabilities Act of 1990 (Public Law 101-336), the imposition of limits or other restrictions on maximum usage levels for the relay service, which shall include the development of a program to provide basic communications requirements to all relay users at discounted rates, including discounted toll-call rates, and, for usage in excess of those basic requirements, at rates that recover the full costs of service.

(3) More efficient means for obtaining and distributing equipment to qualified subscribers.

(4) The establishment of quality standards for increasing the efficiency of the relay system.

~~(j) The report described in subdivision (i)~~

*(m) The report described in subdivision (l) that is due no later than December 31, 2012 2013, shall evaluate options for controlling the program costs of providing speech-generating devices and include information on any barriers to participation in the program by eligible subscribers.*

~~(k)~~

(n) In order to continue to meet the access needs of individuals with functional limitations of hearing, vision, movement, manipulation, speech, and interpretation of information, the commission shall perform ongoing assessment of, and if appropriate, expand the scope of the program to allow for additional access capability consistent with evolving telecommunications technology.

~~(t)~~

(o) The commission shall structure the programs required by this section so that a charge imposed to promote the goals of

1 universal service reasonably equals the value of the benefits of  
2 universal service to contributing entities and their subscribers.

3 *(1) The requirement for submitting a report imposed under*  
4 *subdivision (l) is inoperative on January 1, 2016, pursuant to*  
5 *Section 10231.5 of the Government Code.*

6 *(2) A report submitted pursuant to subdivision (l) shall be*  
7 *submitted in compliance with Section 9795 of the Government*  
8 *Code.*

9 *SEC. 3. No reimbursement is required by this act pursuant to*  
10 *Section 6 of Article XIII B of the California Constitution because*  
11 *the only costs that may be incurred by a local agency or school*  
12 *district will be incurred because this act creates a new crime or*  
13 *infraction, eliminates a crime or infraction, or changes the penalty*  
14 *for a crime or infraction, within the meaning of Section 17556 of*  
15 *the Government Code, or changes the definition of a crime within*  
16 *the meaning of Section 6 of Article XIII B of the California*  
17 *Constitution.*